

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JON R. DEUTSCH,
Plaintiff,

v.

CHIWAHA, INC.,
Defendant

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CIVIL ACTION NO. 1:15-CV-1238-LY

**DEFENDANT’S REPLY TO PLAINTIFF’S RESPONSE IN OPPOSITION TO
DEFENDANT’S MOTION TO POSTPONE FINAL PRETRIAL CONFERENCE**

Defendant respectfully replies to Plaintiff’s Response to Postpone the Pretrial Conference and would show:

Plaintiff did not timely file his response by 5:00pm on October 19, 2016. The Court has made it clear that 5:00pm is the operative deadline for pleadings to be filed. Plaintiff’s response, which was very brief, was more than five hours late. There was no accompanying motion to extend the time for filing the same.

Plaintiff continues to make patently and factually untrue statements, such as “Defense counsel and his staff called the Plaintiff’s counsel ‘El Sapo’ which means ‘Snitch, Toad, and South American Piece of Shit’.” In any regard, the Magistrate has this allegation under advisement in the pending ruling on the contempt motion, regarding which the Magistrate conducted an evidentiary hearing on September 13. Likewise, he retreads his utterly false allegation the defense counsel “solicited” Defendant, which is totally fabricated.

Plaintiff offers no reason logistically to oppose Defendant’s motion, such as burden, etc. Rather he argues that the Court should simply dismiss the case because he wants it dismissed and wants to tax some costs on Defendant.

Nor does he mention that Defendant has a pending counterclaim pending that has to be adjudicated before Plaintiff can unilaterally dismiss the case.

Defendant's counterclaim disputes Plaintiff's allegation the he has made out a prima facie case of violations under the Americans with Disabilities Act and seeks attorney fees and costs.

Plaintiff labors under the strange theory that, simply because defense counsel is representing Defendant pro bono that Defendant could not therefor be entitled to attorney's fees and costs. That is not, and has never been, the rule.

Simply put, Plaintiff is trying to dig out from under the mess he has created in this litigation and walk away free of any consequence, including the pending sanctions order.¹

Therefore, because Plaintiff's response was not timely and because he has stated no good reason to oppose Defendant's motion, Defendant respectfully requests that the Court postpone the final pretrial conference set for October 27, 2016.

Dated: October 20, 2016.

Respectfully submitted,

/s/ James C. Harrington
James C. Harrington
Texas Bar No. 09048500
1405 Montopolis Drive
Austin, TX 78741
(512) 474-5073 (phone)
(512) 474-0726 (fax)

ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that on October 20, 2016, I electronically filed the foregoing with this Court using the CM/ECF system, which will send notification of such filing to Plaintiff's counsel, Omar Rosales, via e-mail at talon_eye@yahoo.com.

/s/ James C. Harrington
James C. Harrington

¹ It is worth noting that Plaintiff did not oppose a similar motion in a related case to postpone the final pretrial conference, which the Court granted. John Deutsh V. La Tierra de Simmons Familia, Ltd., Civil Action No. 1:15-CV-901-RP.